

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	
	:	Case No. CR 1-02-005
Plaintiff-Respondent,	:	
	:	Senior Judge Spiegel
-vs-	:	
	:	
LESLIE WOOD,	:	<u>UNITED STATES' RESPONSE</u>
	:	<u>TO DEFENDANT'S MOTION</u>
Defendant-Movant.	:	<u>FOR RE-SENTENCING</u>
	:	

STATEMENT OF FACTS

A copy of the docket sheet from the Scioto County Clerk's Office indicates that the defendant had received a term of imprisonment on a state narcotics offense on March 7, 2001. A search of the records indicates that the defendant was ordered to serve a period of incarceration in Pickaway Correctional Institute. The state commitment does not specify whether the sentence imposed should be served concurrent or consecutive to any federal incarceration. The defendant was then taken into federal custody and first appeared in District Court in the Southern District of Ohio on December 20, 2001. The defendant entered a plea of guilty to federal drug charges on February 5, 2002. At his own request, the defendant was removed back to the custody of the Ohio state authorities while he awaited sentencing. The defendant was again returned to the custody of the federal authorities for sentencing pursuant to a writ on August 15, 2002. Defendant Wood was sentenced by this Court to a term of imprisonment of 130 months with a recommendation that the federal sentence be run concurrent with whatever imprisonment the defendant received in case number CR-00-00727. This Motion to Vacate Sentence was filed on August 12, 2005.

PRESENT MOTION

In the present motion, the defendant moves to have his sentence amended on one issue. The Defendant contends that his sentence is somehow erroneous due to the Bureau of Prisons refusal to run the defendant's sentences concurrently.

The defendant's Motion for Re-Sentencing is against this circuit's law and should be denied. First, as a practical matter, it is unclear how much time is in fact remaining on the state sentence imposed in CR-00-00727, the state drug conviction that is the imprisonment of concern. The defendant has already served a total of sixteen (16) months on case number CR-00-00727, described as follows; he served nine (9) months from the time of the imposition of sentence to his initial appearance on the underlying federal offense and then an additional seven (7) months while awaiting sentence by this Court. There may not be any more state imprisonment time to consider. Further, it is difficult to believe the defendant's allegation that the Bureau of Prisons does not have the Judgement and Commitment Order for review when the defendant himself, attached a copy of the order to this motion.

More importantly, the District Court is without authority to do more than merely recommend that any sentence be served concurrent with a state prison sentence. United States v. Herb, 436 F.2d. 566 at 568 (6th Cir. 1971). Such action would be in violation of the Attorney General statutory duty of delegating placement of prisoners pursuant to 18 U.S.C. § 4082. Herb at 568. See also, Jake v. Herschberger 173 F.3d 1059 at 1065 (6th Cir. 1999) .

That is precisely the situation before the Court. The Court is without authority to do more than recommend the term of how a sentence is to be served in connection with a state sentence. Further it is unclear if there is even a viable difference in the ultimate outcome of the sentence

should this Court have had such power. As such he defendant's motion is not well founded and must be denied.

Respectfully submitted,

GREGORY G. LOCKHART
United States Attorney

s/Timothy D. Oakley
TIMOTHY D. OAKLEY (0039965)
Assistant United States Attorney
Attorney for Plaintiff
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711
Fax: (513) 684-2047
Tim.Oakley @usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Motion was served this 23rd day of August, 2005, by regular U.S. Mail on: Leslie Wood, Defendant, Inmate No. 65736-061, FCI Ashland, Federal Correctional Institution, P.O. Box 6001, Ashland, KY 41105.

s/Timothy D. Oakley
TIMOTHY D. OAKLEY (0039965)
Assistant United States Attorney